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## Cities, Government, Law, and Civil Society

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# CITIES, GOVERNMENT, LAW, AND CIVIL SOCIETY

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## I. INTRODUCTION

For too long, legal commentators have developed accounts of law, government, civil society, and rights to access that society from a national-federal perspective.<sup>1</sup> As Americans increasingly live in cities, it is time for legal theorists to concentrate on municipalities as the locus of civil society.<sup>2</sup> From an American national-federal perspective, government and law play primarily a remedial role with regard to civil society—stepping in only to resolve great inequities, usually by creating legally recognized civil rights and enforcing them.<sup>3</sup> Civil society and civil rights, however, exceed this cramped national-federal framework.

In the United States today, civil society is a multi-faceted arena for social coordination, social cooperation, and many different kinds of consonant and collective action. Civil rights and the legal protection afforded to them matter instrumentally in that they promote and protect participation in civil society. That participation makes it possible for individuals to engage in all manner of activities that are

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1. See *infra* notes 125-49.

2. A majority of the United States population lives in cities. Based on data from the 2000 and 2010 U.S. censuses and 2013 population estimates, researchers concluded that, as of 2013, almost two-thirds of the U.S. population do live in cities. DARRYL T. COHEN ET AL., U.S. CENSUS BUREAU, POPULATION TRENDS IN INCORPORATED PLACES: 2000 TO 2013, at 1 (2015), <https://www.census.gov/content/dam/Census/library/publications/2015/demo/p25-1142.pdf> [<https://perma.cc/Z4RF-SXGR>].

3. See *infra* notes 145-49.

useful, enjoyable, and worthwhile. In other words, the significance of civil rights follows from the existence of a civil society worth participating in.

To the extent that government can and does make civil society viable and valuable, it is an important part of civil society. This point gets lost in most national-federal accounts of the relationship between government, law, and civil society. Indeed, the absence of the municipal and the foregrounding of the national have left classical liberal accounts of civil society, government, and law with a schizophrenic, even paranoid, picture of government and law. While these accounts aim to construct and justify government, they also devote significant attention to its minimization and to putting restraints upon it.<sup>4</sup> By conceiving of government purely as a remedy for social problems that arise from the absence of a sovereign, national-federal accounts neglect the more affirmative role in civil society government can play.

The idea of civil society has been understood differently across history. John Locke equated civil society and political society, using the terms interchangeably.<sup>5</sup> Locke proffered civil society as the legitimate, peaceful, law-governed alternative to chaos and to tyranny.<sup>6</sup> In the twentieth century, activists in and dissidents from totalitarian Communist regimes in Eastern Europe contrasted civil society with the political arena.<sup>7</sup> They regarded civil society as pre-political,

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4. Particularly in the twentieth century, liberal philosophers like John Rawls developed a less starkly paranoid view of the state, urging that the basic institutions of society guarantee and conform to preconditions for every natural person's realization of her own good. JOHN RAWLS, *POLITICAL LIBERALISM* 174 (1993). Rawls developed a thin theory of the good that included the idea of primary goods; goods a just society makes available to all citizens on the basis of their needs. *Id.* at 178, 187-90.

More recently, from the legal academy, Robin West revisits the national-federal rule of law tradition and recasts government in an enabling role, eschewing dominantly remedial interpretations of legal justice, civil rights, and rule of law. West explains her view fully and eloquently in ROBIN L. WEST, *RE-IMAGINING JUSTICE: PROGRESSIVE INTERPRETATIONS OF FORMAL EQUALITY, RIGHTS, AND THE RULE OF LAW* (2003) [hereinafter WEST, *RE-IMAGINING JUSTICE*]. There, West addresses the American federal constitutional and legislative tradition to argue that civil rights are not solely about protecting individuals from the state but are, more deeply, about creating the conditions in which individuals are sufficiently protected from each other and provided for so that far more than basic needs are met. *Id.* at 9-10. Ultimately, she urges an account of rule of law that starts from human needs, particularly those that arise from the embodied self. *Id.* at 10.

5. See JOHN LOCKE, *SECOND TREATISE OF GOVERNMENT* § 89 (C.B. Macpherson ed., Hackett 1980) (1690).

6. JOHN DUNN, *THE POLITICAL THOUGHT OF JOHN LOCKE: AN HISTORICAL ACCOUNT OF THE ARGUMENT OF THE "TWO TREATISES OF GOVERNMENT"* 50 (1969). This is Locke's theme throughout the Second Treatise, as he develops the argument that civil society is distinct from and superior to both the state of nature and to absolute monarchy. See LOCKE, *supra* note 5, §§ 90, 93-94, 131, 135-37, 199.

7. See, e.g., VÁCLAV HAVEL ET AL., *THE POWER OF THE POWERLESS: CITIZENS AGAINST THE STATE IN CENTRAL-EASTERN EUROPE* 29-30 (John Keane, ed. 1985) ("Between the aims of the post-totalitarian system and the aims of life there is a yawning abyss: while life, in

though capable of generating political movements.<sup>8</sup> For Locke, a legitimate political regime was tantamount to civil society; for those who fought late-twentieth century communism, civil society was fundamentally detached from government. Both these positions on civil society strike me as excessive, defining civil society too much in relation to government. On a less reactive understanding, our idea of civil society need not start with politics, law, or government. None of these are coextensive with, opposed to, or outside of civil society. Rather, civil society produces and is produced by many activities in many settings; for example, commercial transactions, leisure activities, educational ventures, scientific research, museums of art and history, travel, or work.

Perhaps the role of cities in civil society has been neglected by the legal academy because cities are not sovereigns. Sovereignty has often been the issue that provokes theoretical attention to government and its role in civil life.<sup>9</sup> At the heart of the federal-national account of civil society and government is the potential threat the sovereign poses to other actors in civil society. But there is no necessary connection between concentrating on the nature and workings of sovereignty and considering the role for government and law in civil society. And when a government is not a sovereign, its ability to threaten is inherently constrained. That is what examining cities—nonsovereign governments embedded in a web of other governments—shows us.

When we turn our attention to cities, a very different role for government and law emerges. Cities often exemplify how government and law can enable civil society and all those encompassed by it. They show how government can promote and amplify collective action, not only at the local level but even at the international one. In the United States today, governments can and do provide resources

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its essence, moves toward plurality, diversity, independent self-constitution, and self-organization, in short, towards the fulfillment of its own freedom, the post-totalitarian system demands conformity, uniformity, and discipline. While life ever strives to create new and 'improbable' structures, the post-totalitarian system contrives to force life into its most probable states."); *see also id.* at 47 ("I think that the origins of Charter 77 illustrate very well what I have already suggested above: that in the post-totalitarian system, the real background to the movements that gradually assume political significance does not usually consist of overtly political events of confrontations between different forces or concepts that are openly political. These movements for the most part originate elsewhere, in the far broader area of the 'pre-political', where 'living within a lie' confronts 'living within the truth', that is, where the demands of the post-totalitarian system conflict with the real aims of life."). *But cf.* CHRIS HANN, CIVIL SOCIETY: CHALLENGING WESTERN MODELS 1, 6 (Elizabeth Dunn & Chris Hann eds., 1996) (rejecting the divide between politics and civil society, and arguing that thinking in these terms leads to an excessively privatized vision of civil society).

8. *See* HAVEL ET AL., *supra* note 7, at 79 (noting approvingly Václav Benda's notion of a "parallel polis," but insisting that it is distinctively rooted in the "pre-political").

9. *See infra* Section II.B.

for consonant and collective action, even in nongovernmental settings. Governments also coordinate and cooperate alongside fellow actors such as citizen activist groups, small and large businesses, labor unions, universities and colleges, and other nongovernmental organizations.<sup>10</sup> This is particularly apparent at the local level. By delving into local government, we gain a distinctive perspective on the intersection of government and law, on one hand, and civil society, on the other.

This Article develops a first iteration of a locality-centered account of civil society and the role for government and law within it.<sup>11</sup> I examine a particular municipality—the City of Pittsburgh—to provide a concrete example from which to generate ideas and judgments about the terrain and content of this localist account. While it may seem startling to approach the large goal of providing a generalizable account of civil society and municipal agency from a review of one U.S. city, I believe that doing so keeps the account grounded in particularities that highlight the very concrete ways in which civil society both manifests in, and can be supported by, a city. As more cities and other considerations are brought to bear on my account, I expect revisions to be in order. While I hope the account I produce can be serviceable for cities outside of the United States, my own ambition is to identify ideals suitable to cities within it. This is partly because my own expertise is in U.S. law, but also because I believe any account of cities, civil society, and law must relate to actual settings. U.S. cities share enough historical and legal context to answer to a general account. I leave to others, in their own application of reflective equilibrium, the question of whether the lessons I draw have implications for other cities in other places, with different histories and different laws.<sup>12</sup>

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10. For further discussion of a highly pluralist, networked idea of civil society, see Michael Walzer, *The Idea of Civil Society: A Path to Social Reconstruction*, 38 DISSENT, Spring 1991, at 293, 298-304.

11. I use the method of reflective equilibrium to generate my account. John Rawls famously used reflective equilibrium to work out his theory of justice, but the method has been adopted more widely within philosophy. JOHN RAWLS, A THEORY OF JUSTICE 20 (1971). As Norman Daniels explains, “[t]he method of reflective equilibrium consists in working back and forth among our considered judgments (some say our ‘intuitions,’ . . . ) about particular instances or cases, the principles or rules that we believe govern them, and the theoretical considerations that we believe bear on accepting these considered judgments, principles, or rules, revising any of these elements wherever necessary in order to achieve an acceptable coherence among them.” Norman Daniels, *Reflective Equilibrium*, in THE STANFORD ENCYCLOPEDIA OF PHILOSOPHY (Edward N. Zalta ed. 2016).

12. I presented some early ideas related to this Article at the 4th Annual International & Comparative Urban Law Conference: Law and the New Urban Agenda. The New Urban Agenda is the United Nations’ most recent guidance adopted by and for member states as they address the worldwide trend toward urbanization. See G.A. Res. 71/256 (Dec. 23, 2016). Based on discussions at the conference and the presentations that focused on law

## II. PITTSBURGH

### A. *A Thick Description*

#### 1. *Overview*

Pittsburgh showcases itself as a nonsovereign legal and political entity that provides its residents and visitors with the benefits of and the means to engage in coordination and cooperation. This goes well beyond being a narrow provider of minimal night-watchman services. From its inception, the City of Pittsburgh has actively promoted and participated in civil society. Its ever-increasing circle of partnerships with businesses, universities and colleges, not-for-profit foundations, and other governments has enabled Pittsburgh to widen and deepen the kinds of harmonized and collective actions the City and its denizens can take. In other words, local government in Pittsburgh has significantly enhanced civil society there.

The City of Pittsburgh did not exist as a legal entity until 1816<sup>13</sup> when the Pennsylvania State Legislature permitted it to incorporate as a city rather than a borough.<sup>14</sup> The Pennsylvania State Legislature created Allegheny County in 1788, almost three decades before deeming Pittsburgh a city.<sup>15</sup> Today, the City of Pittsburgh is one of one hundred and thirty local governments encompassed by Allegheny County. It is the only one of these currently organized under a “home rule” charter.<sup>16</sup> In Pennsylvania, home rule municipalities are granted authority by the State Legislature under the Home Rule Law,<sup>17</sup> specific authorizing statutes, and the Second Class City Code.<sup>18</sup> Home

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and cities outside the United States, I believe a complete account of cities, law, and civil society will ultimately have a comparative dimension.

13. Prior to any European presence in North America, the Monongahela people dominated what became western Pennsylvania; later they were supplanted by the Iroquois and the Lenape. The small original settlement at the junction of the three rivers did not have a street plan until late in the 1700s. See JAMES H. MERRELL, *INTO THE AMERICAN WOODS: NEGOTIATORS ON THE PENNSYLVANIA FRONTIER* (2000); see also JANE T. MERRITT, *AT THE CROSSROADS: INDIANS AND EMPIRES ON A MID-ATLANTIC FRONTIER, 1700-1763* (2003).

14. STEFAN LORANT, *PITTSBURGH: THE STORY OF AN AMERICAN CITY* 48 (5th ed. 1999).

15. *Id.* at 53.

16. The electorate of the City of Pittsburgh approved the Home Rule Charter in 1974, granting the City broad authority to act in the interest of its citizens. GOVERNMENT STUDY COMMISSION OF THE CITY OF PITTSBURGH, *WHAT IS HOME RULE?*, (1974), [http://apps.pittsburghpa.gov/cityclerk/2014\\_home\\_rule.pdf](http://apps.pittsburghpa.gov/cityclerk/2014_home_rule.pdf) [hereinafter *WHAT IS HOME RULE?*]. Under the Home Rule and Optional Plan Law, Pittsburgh is a second-class city because there are fewer than one million residents (roughly 300,000 people live within the boundaries of the City of Pittsburgh). 53 PA. STAT. AND CONS. STAT. ANN. §101 (West 2017); *QuickFacts: Pittsburgh City, Pennsylvania*, U.S. CENSUS (July 1, 2016), <https://www.census.gov/quickfacts/fact/table/pittsburghcitypennsylvania/PST045216>.

17. 53 PA. CONS. STAT. §§ 2901-3171 (2017).

18. 53 PA. STAT. AND CONS. STAT. ANN. §§ 22101-28707 (West 2017).

rule does not imply sovereignty. The State of Pennsylvania restricts home rule cities' authority by the state constitution,<sup>19</sup> statutes applying to the entire Commonwealth, and section 2962 of the Home Rule Law.<sup>20</sup> However, in Pennsylvania, home rule is generally defined in negative terms: the municipality has broad power to act, limited only by the state constitution and statutes.<sup>21</sup> Section 2961 of the Home Rule Law bolsters the already broad municipal power by establishing the scope of home rule and mandating that courts construe grants of municipal authority in favor of the municipality.<sup>22</sup>

Prior to home rule, Pittsburgh had various forms of local government as well as a number of different broader identities.<sup>23</sup> Initially, it was a focal point in the frontier during America's first westward expansion. By the 1800s, it was a tremendous magnet for European immigration to the United States, retaining this pull throughout the nineteenth century. Twice, mass domestic migration added African Americans to Pittsburgh's population. During the first half of the twentieth century, Pittsburgh was an industrialized manufacturing titan. Starting right after World War II, the City underwent one of two conscious "Renaissances"—periods of sustained effort from different stakeholders and the City to reinvigorate Pittsburgh. During both of these redevelopments, the City of Pittsburgh planned, organized, and facilitated large-scale municipal improvements. The City worked in concert with Allegheny County, the Commonwealth of Pennsylvania, and private institutions of all sorts to revitalize itself. These revitalizations solidified the City's role as an expansive, assertive service provider and as a convenor for regional action. The City of Pittsburgh formed working relationships with universities and colleges during both Renaissances. Pittsburgh's institutions of higher education have continued to work with the City to make it a science

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19. Two common areas where the state constitution limits the authority of home rule municipalities: municipal boundaries and schools. PA. GOVERNOR'S CTR. FOR LOCAL GOV'T SERVS., HOME RULE IN PENNSYLVANIA 55 (2018), [http://dced.pa.gov/download/home-rule-governance-in-pennsylvania/?wpdmdl=56792&ind=Nm6XYNO35U\\_RldKo8sIDV1q7x8%E2%80%93935zPAAxQGEfWwg\\_hr%E2%80%9393wqMBPKb2ZZF1cCFdsRM](http://dced.pa.gov/download/home-rule-governance-in-pennsylvania/?wpdmdl=56792&ind=Nm6XYNO35U_RldKo8sIDV1q7x8%E2%80%93935zPAAxQGEfWwg_hr%E2%80%9393wqMBPKb2ZZF1cCFdsRM) [hereinafter HOME RULE IN PENNSYLVANIA]; see also PA. CONST. art. IX, § 2 ("A municipality which has a home rule charter may exercise any power or perform any function not denied by this Constitution, by its home rule charter or by the General Assembly at any time.").

20. 53 PA. CONS. STAT. § 2962 (2017) (enumerating a wide range of actions forbidden to Home Rule municipalities).

21. *Id.* § 2961; see also HOME RULE IN PENNSYLVANIA, *supra* note 19, at 53.

22. 53 PA. CONS. STAT. § 2961. In a 2017 report, the Pennsylvania Governor's Center for Local Government Services wrote: "[H]ome rule is defined negatively by identifying constitutional or statutory prohibitions and concluding the remainder of municipal activities is a valid field of exercise for home rule powers where a municipality may act without a specific statutory authorization or even in a manner contradictory to a statutory authorization." HOME RULE IN PENNSYLVANIA, *supra* note 19, at 53.

23. See *infra* Section I.A.3.

and technology hub.<sup>24</sup> The beginning of the twenty-first century has seen Pittsburgh gain international prominence.<sup>25</sup>

## 2. Local Government in Pittsburgh Before Home Rule

Before the Commonwealth of Pennsylvania recognized it as a city, Pittsburgh was incorporated as a borough with a small, limited government.<sup>26</sup> At their height, borough government operations were minimal, though the borough could collect and apportion taxes, regulate public markets, and supervise streets and early sanitation sites.<sup>27</sup> Most business was conducted via town meeting, the legislative body for the borough. As the City grew, both in area and in population, so did demand for governmental action to create infrastructure and provide services. In the first half of the nineteenth century, the State of Pennsylvania responded by directly providing public works or by investing in specific public-private enterprises.<sup>28</sup> As the century progressed, Pittsburgh's own municipal government became more involved—supplying streets, water, and sewers.<sup>29</sup> When, in 1816, Pennsylvania recognized Pittsburgh as a city, the State Legislature assigned Pittsburgh a charter that created a government with a bi-

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24. Mackenzie Carpenter & Deborah M. Todd, *The Google effect: How has the Tech Giant Changed Pittsburgh's Commerce and Culture?*, PITTSBURGH POST-GAZETTE (Dec. 7, 2014, 12:00 AM), <http://www.post-gazette.com/business/tech-news/2014/12/07/Google-effect-How-has-tech-giant-changed-Pittsburgh-s-commerce-and-culture/stories/201412040291>; Harry Funk, *Why Pittsburgh is Becoming a Hub for Additive Manufacturing (Think 3D Printing)*, WHAT'S NEXT FOR PITTSBURGH (Oct. 26, 2015), <http://www.nextpittsburgh.com/features/pittsburgh-becoming-hub-additive-manufacturing>; Steven Kurutz, *Pittsburgh Gets a Tech Makeover*, N.Y. TIMES (July 22, 2017), <https://www.nytimes.com/2017/07/22/style/pittsburgh-tech-makeover.html>; Press Release, U.S. Dept. of Defense, DoD Announces Award of New Advanced Robotics Manufacturing (ARM) Innovation Hub in Pittsburgh, Pennsylvania (Jan. 13, 2017), <https://www.defense.gov/News/News-Releases/News-Release-View/Article/1049127/dod-announces-award-of-new-advanced-robotics-manufacturing-arm-innovation-hub-i>; Kathy Serenko, *4 Carnegie Mellon Spinoffs Acquired by Global Companies in 2015*, WHAT'S NEXT FOR PITTSBURGH (Mar. 7, 2016), <http://www.nextpittsburgh.com/features/global-companies-acquire-carnegie-mellon-spinoffs/>.

25. In 2009, President Barack Obama selected Pittsburgh as the site of that year's G20 meeting, raising its global profile. Paul Owen, *G20 Meeting: Why Pittsburgh?*, GUARDIAN (Sept. 24, 2009), <https://www.theguardian.com/world/2009/sep/24/g20-meeting-why-pittsburgh>. More recently, the mayors of Pittsburgh and Paris co-authored an op-ed for the New York Times to state their shared support for the Paris Agreement and their commitment to environmental protection, after President Donald Trump withdrew the United States from the world's leading international plan for averting negative climate change. Anne Hidalgo & William Peduto, *The Mayors of Pittsburgh and Paris: We Have Our Own Climate Deal*, N.Y. TIMES (June 7, 2017), <https://www.nytimes.com/2017/06/07/opinion/the-mayors-of-pittsburgh-and-paris-we-have-our-own-climate-deal.html>.

26. Joel A. Tarr, *Infrastructure and City-building in the Nineteenth and Twentieth Centuries*, in CITY AT THE POINT: ESSAYS ON THE SOCIAL HISTORY OF PITTSBURGH 213, 219 (Samuel P. Hays ed., 1989).

27. *Id.* at 219-20.

28. *Id.* at 218.

29. *Id.* at 219.



cameral governing body and a mayor.<sup>30</sup> The bicameral council elected the mayor, who had little independent power.<sup>31</sup> About fifteen years later, the State divided the City into four wards, and members of the councils were then elected on a ward basis.<sup>32</sup> The councils ran the City via joint standing committees, starting with six in 1816 and growing to eighteen in 1866.<sup>33</sup> Throughout the period, the State restricted the power of the municipal government, especially with regard to raising revenues, whether by taxation or bond.<sup>34</sup> The City provided basic police power services, such as street improvements and water supply.<sup>35</sup>

By the late nineteenth century, the ward system was in the grips of a graft-ridden political “ring,” captained by Christopher Magee and William Flinn.<sup>36</sup> Magee was a prominent Pittsburgh businessman; Flinn, a partner in a contracting firm.<sup>37</sup> In 1887, these businessmen pushed the State Legislature to issue a new charter for the City of Pittsburgh.<sup>38</sup> The Charter authorized the City to engage in major public works.

Magee and Flinn consolidated power by using their political organizational skills to nominate and elect “cheap and dependable men” to the City’s select and common councils.<sup>39</sup>

Through a network of ward-level organizations, the ring invidiously infiltrated . . . neighborhood boat clubs, union halls, and . . . saloons. It further tightened its grip at both the city and county levels by controlling the rich patronage derived from the ring’s power over police and fire department appointments and over late-nineteenth-century city building.<sup>40</sup>

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30. *Id.* at 220.

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.* at 222.

36. JOHN F. BAUMAN & EDWARD K. MULLER, *BEFORE RENAISSANCE: PLANNING IN PITTSBURGH, 1889-1943*, at 16 (2006). In 1874, the Pittsburgh Chamber of Commerce was organized. Throughout the 1870s, this group, along with Magee and Flinn, controlled the city government. By 1880, Pittsburgh had an inefficient, captured city government and a dirty water supply. It had no parks or playgrounds, no permanent art collection, and no symphony orchestra. LORANT, *supra* note 14, at 174-75. Throughout the 1890s, the laboring population grew, and politicians traded jobs for votes. Public works in the City meant kickbacks to politicians from the companies hired to provide public goods such as roads, public buildings, or public transport systems. *Id.* at 187-93.

37. BAUMAN & MULLER, *supra* note 36, at 21.

38. *Id.* at 20-21.

39. *Id.* at 21-22.

40. *Id.* at 21-22.

Residents of wealthy neighborhoods got paved streets, better plumbing, and early public transit,<sup>41</sup> but City taxpayers were massively overcharged by ring-affiliated businesses and firms.<sup>42</sup> Additionally, residents of working-class and poor neighborhoods went without running water, sewers, and electricity.<sup>43</sup>

As the nineteenth century wound down, demands for reform of the municipal government and public works geared up.<sup>44</sup> These demands coincided with the national American Progressive movement, which focused on improving living and social conditions in America's crowded cities.<sup>45</sup> In Pittsburgh, as elsewhere, reformers associated improvements with eliminating local political machines, such as the Republican Magee-Flinn ring.<sup>46</sup>

In 1901, Pittsburgh's first City Charter replaced the ward system with a more streamlined executive-legislative system, with the key features being a strong mayor and city councilors that were elected "at large" and thus answerable to the entire City rather than small wards.<sup>47</sup> This Charter created a very powerful executive branch, giving it control over, among other things, public safety, public works, collection of delinquent taxes, the City treasury, the department of law, and public health. To combat machine politics, the 1901 Charter Act also included a controversial "ripper clause," giving the State a two-year period in which to appoint the City's mayor, and thereby, giving it immediate power to remove the then sitting mayor.<sup>48</sup> Pitts-

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41. *Id.* at 24-29.

42. *Id.* at 30.

43. *Id.*

44. In both 1896 and 1898, presenters at meetings of the National Municipal League spoke about "the deplorable condition of the government of the great City of Pittsburg [sic], and the earnest, but unavailing, struggle for its reformation." EDWIN Z. SMITH, SOME RECENT CHARTER LEGISLATION IN PENNSYLVANIA, ANNUAL PROCEEDINGS OF THE NATIONAL MUNICIPAL LEAGUE 133 (1901). In response to the political corruption and machine politics, the reformist group, the Citizens' Municipal League, organized in 1895. 4 THE AMERICAN HISTORICAL SOCIETY, HISTORY OF PITTSBURGH AND ITS ENVIRONS 6 (1922). Though unsuccessful in electing its candidates, the League became prominent in the Pittsburgh Chamber of Commerce, putting it behind the cause of reforming the City Charter, a step regarded as necessary to wresting control of city government from the political machine. SMITH, *supra*, at 136. What followed was an internecine struggle between Republican state and local organizations and political figures, with local reformist Republicans battling with elected Republicans at the state level, as well as one U.S. Senator from Pennsylvania. *Id.* at 137. These battles were intertwined with rifts in the Republican Party at all levels as well as the newly emergent Democratic Party, which was trying to gain footholds in Pennsylvania.

45. BAUMAN & MULLER, *supra* note 36, at 37-40.

46. *Id.* at 40.

47. In 1901, the Pennsylvania State Legislature enacted a statute called the "Second Class City Law," applicable to Pittsburgh. Second Class City Law, Act of Mar. 7, 1901, Pub. L. 20, No. 14, cl. 11. This Act simplified the municipal legislature by making it unicameral, reducing the number of members, and providing that all of its members were to be elected by the city at large. LORANT, *supra* note 14, at 264-66.

48. BAUMAN & MULLER, *supra* note 36, at 41; SMITH, *supra* note 44, at 147-48.

burgh's citizens did not directly elect their next mayor until 1903.<sup>49</sup> Nevertheless, Pittsburgh's first City Charter established the municipal executive as a powerful, active office.

### 3. *Pittsburgh's Identity in the Twentieth Century*

Demand for, and issuance of, the 1901 City Charter coincided with Pittsburgh's rise as a major population center in the United States. Between 1860 and 1917, Pittsburgh's total population went from just under 50,000 to 534,000, partly because of annexation of neighboring municipalities but primarily because of an enormous influx of European immigrants, especially from Poland and Italy.<sup>50</sup> Industrialization drove European immigration, and this immigration enabled Pittsburgh industries to become enormously productive.<sup>51</sup> In the first half of the nineteenth century, about 6,000 people resided in Pittsburgh.<sup>52</sup> Then, just prior to and during the U.S. Civil War, Pittsburgh underwent serious industrialization<sup>53</sup> and its population grew rapidly. In 1810, its population was 4,768;<sup>54</sup> fifty years later, in 1860, it was almost 50,000;<sup>55</sup> ten years later (five years after the Civil War

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49. From 1901 to 1903, the executive was a "recorder" appointed by the State Legislature. In 1901, the Legislature removed the office of mayor from Pittsburgh, replacing it with an appointed recorder. Mayor William J. Diehl's term ended in 1901 as he was replaced by Recorder A.M. Brown, followed by Recorder J.O. Brown. Heinz History Center, *Mayors of Pittsburgh: 1878-1903*, <https://www.heinzhistorycenter.org/mayors-of-pittsburgh/1878-1903> (last visited Jan. 1, 2018).

In 1903, William B. Hays was the first mayor elected to serve according to the terms of the 1901 City Charter. Heinz History Center, *Mayors of Pittsburgh: 1903-1946*, <https://www.heinzhistorycenter.org/mayors-of-pittsburgh/1903-1946> (last visited Jan. 1, 2018).

50. JOE W. TROTTER & JARED N. DAY, RACE AND RENAISSANCE: AFRICAN AMERICANS IN PITTSBURGH SINCE WORLD WAR II, at 2 (2010).

51. Through 1910, African Americans did not constitute a major component of Pittsburgh's steelworkers. *Id.* at 5. Pittsburgh did not have a large African-American population prior to World War I. At the end of the U.S. Civil War, under 3,000 black people lived in Pittsburgh, making up 2% of the City's residents; in 1910, the number of black residents had grown to 26,000, but blacks made up only 5% of the total population. *Id.* At the onset of World War I, blacks made up 3% of Pittsburgh's total work force, with American-born whites and white immigrants accounting for 29% and 68%, respectively, of those working in the steel industry. *Id.* at 7.

52. LORANT, *supra* note 14, at 79.

53. Between 1852 and 1869, the City underwent serious industrialization and urbanization. Major railroads opened in 1859 and 1865. The Jones and Laughlin Steel Company was in business as of 1861; the Westinghouse Air Brake Company was operational in 1869. Just at the end of the nineteenth century, these companies were joined by Alcoa's predecessor, Pittsburg Reduction Company (1888), H.J. Heinz Company (1889), and Carnegie Steel Company (1892). By this point, approximately 200,000 people lived in the City. LORANT, *supra* note 14, at 146-52; Nora Faires, *Immigrants and Industry, in CITY AT THE POINT*, *supra* note 26, at 3, 10.

54. LORANT, *supra* note 14, at 95.

55. *Id.* at 101.

ended), the City's population had grown to 86,076.<sup>56</sup> After gaining recognition as a second-class city, with a charter issued by the legislature, the City of Pittsburgh greatly expanded its land area when it annexed the adjacent municipality, Allegheny City, in 1907.<sup>57</sup>

Chartered as a city, expanded in area, and with a growing population, Pittsburgh turned its attention to "civic improvement," specifically regarding roads and transportation, flood protection, parks and playgrounds, sanitation, building safety, and "smoke abatement."<sup>58</sup> A City Planning Department was created in 1911.<sup>59</sup> By 1920, the City Planning Department was becoming active at the instigation of a citizen group called the Municipal Planning Association. By 1933, Pittsburgh adopted its first zoning code, extending municipal regulation to land use within the City.<sup>60</sup> In 1936, however, a serious flood interrupted land use planning in Pittsburgh. The flood was so severe, the federal government had to step in to aid recovery.<sup>61</sup> Between this flood, the Great Depression, and World War II, Pittsburgh did not return its attention to civic improvement until 1941. When it did, it did so in a big way, entering into a period now known as Renaissance I.<sup>62</sup>

The years between World War I and the end of World War II set the stage for Renaissance I. As World War II wound down, the City desperately needed cleaner air. Throughout World War II, Pittsburgh companies and their factories operated twenty-four hours a day. Pittsburgh factories supplied the military with everything from ships to glass lenses to steel, all on a huge scale.<sup>63</sup> This exacerbated the main threat to the City's future viability: the smoke and black smog

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56. Table 10. *Population of the 100 Largest Urban Places: 1870*, U.S. BUREAU OF THE CENSUS (June 15, 1998), <https://www.census.gov/population/www/documentation/twps0027/tab10.txt>. This made Pittsburgh an American urban hub, though it trailed the two megacities of 1870: New York City and Philadelphia. New York City had 942,292 residents in 1870, not including the 396,099 residents of the, then separate, City of Brooklyn. Philadelphia had 674,022 residents. *Id.* In 1870, Pittsburgh was the sixteenth largest city in the United States, clustered, population-wise, with Cleveland (92,829), and Jersey City (82,546). *Id.*

57. Diana Nelson Jones, *The Day the City of Allegheny Disappeared*, PITTSBURGH POST-GAZETTE (Dec. 9, 2007), <http://www.post-gazette.com/local/city/2007/12/09/The-day-the-City-of-Allegheny-disappeared/stories/200712090229>. This annexation actually gave rise to the U.S. Supreme Court decision that adopted Dillon's Rule: local governments are entirely creatures of state law; they have no independent rights of existence. *See Hunter v. Pittsburgh*, 207 U.S. 161, 178 (1907).

58. LORANT, *supra* note 14, at 364, 368.

59. BAUMAN & MULLER, *supra* note 36, at 94.

60. LORANT, *supra* note 14, at 368.

61. *Id.* at 369-70.

62. TROTTER & DAY, *supra* note 50, at 46.

63. Leslie A. Przybylek, *We Can Do It! WWII*, WESTERN PA. HIST., Spring 2015, at 9, <https://journals.psu.edu/wph/article/viewFile/59864/59602>.

that blanketed it.<sup>64</sup> Later, during the 1950s and 1960s, Pittsburgh had to contend with job and population loss as the local steel industry declined and manufacturing generally relocated from cities like Pittsburgh to the American South and overseas.<sup>65</sup> Furthermore, after World War II, Pittsburgh had to confront its own culture of racism, especially as the African-American population of the City had grown and the twentieth-century U.S. civil rights movement hit home.<sup>66</sup> In fact, Renaissance I coincided with the “Second Great Migration”<sup>67</sup> of African Americans from former Confederate states to northern states.<sup>68</sup> In 1950, African-American residents numbered 82,500, constituting 12% of the City population. By 1970, 105,000 African-American people made up 20% of the population.<sup>69</sup>

A pathbreaking public-private partnership undergirded Renaissance I, which ultimately spanned the years from 1943 through the 1960s. It paired Mayor David Lawrence<sup>70</sup> and the citizens’ group Allegheny Conference on Community Development (AC), initially spearheaded by Richard King Mellon (R.K. Mellon)—then Pittsburgh’s leading financier and industrialist.

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64. LORANT, *supra* note 14, at 386; ALLEGHENY CONFERENCE ON CMTY. DEV., THE HISTORY OF THE ALLEGHENY CONFERENCE ON COMMUNITY DEVELOPMENT: MAKING THE PITTSBURGH REGION ATTRACTIVE TO SMART PEOPLE AND SMART INVESTMENT 2 (2016), <http://www.alleghenyconference.org/wp-content/uploads/2016/08/AlleghenyConferenceHistory.pdf> [hereinafter HISTORY OF THE ALLEGHENY CONFERENCE].

65. TROTTER & DAY, *supra* note 50, at 44.

66. Despite the Great Depression slowing European immigration, the City of Pittsburgh’s population continued to grow during the interwar period, which coincided with “The First Great Migration” of African Americans from southern to northern U.S. states. CITIES IN AMERICAN POLITICAL HISTORY 482 (Richardson Dilworth ed., 2011); *The Great Migration, 1910 to 1970*, U.S. CENSUS BUREAU (Sept. 13, 2012), <https://www.census.gov/dataviz/visualizations/020/>. By the end of World War II, Pittsburgh’s total population was roughly 600,000, with African Americans accounting for approximately 9% or 62,000 residents. African Americans in Pittsburgh encountered discrimination in work, schools, and education. TROTTER & DAY, *supra* note 50, at 34-36, 203 tbl.1. World War II precipitated a local civil rights movement that was part of a national effort by African Americans and their allies to overcome racist discriminatory practices. *Id.* at 42. White-led civil rights organizations and initiatives grew in Pittsburgh too. The Pittsburgh Interracial Action Council, for example, worked to desegregate Pittsburgh area restaurants. *Id.* In 1945, during his first campaign for mayor, Democrat David L. Lawrence noted Pittsburgh’s ethnic, racial, class, and religious diversity, pledging to create a “Civic Unity Council.” When he took office he fulfilled this pledge, giving the Unity Council the power to investigate cases of discrimination and propose remedies. *Id.* at 42-43.

67. *The Great Migration, 1910 to 1970*, *supra* note 62.

68. At no time in the nineteenth century did Pittsburgh have a particularly large black population. In 1830, eight black enslaved people and 453 free black people lived in the City; the entire population at time was 12,568. LORANT, *supra* note 14, at 107-08.

69. TROTTER & DAY, *supra* note 50, at 203 tbl.1.

70. Mayor David Lawrence held office from 1946 to 1959, going on to become Governor of Pennsylvania. Tarr, *supra* note 26, at 249; *David Lawrence, Pittsburgh Visionary, Political Genius and Leader*, PITTSBURGH POST-GAZETTE: THE DIGS (Oct. 23, 2013), <https://newsinteractive.post-gazette.com/thedigs/2013/10/23/david-lawrence-pittsburgh-visionary-political-genius-and-leader/>.

R.K. Mellon had worked his way up in the family business, eventually heading it and making it wealthier than it had ever been.<sup>71</sup> During the 1930s and early 1940s, he became president of the Mellon Bank, joined many corporate boards, and consolidated and strengthened the Mellon family business and financial enterprises.<sup>72</sup> As of the early 1940s, R.K. Mellon headed a financial group that controlled Gulf Oil, Koppers, and Alcoa; the financial group also strongly influenced U.S. Steel, Westinghouse Airbrake, the Pennsylvania Railroad, Pittsburgh Plate Glass, and Pittsburgh Consolidated Coal.<sup>73</sup>

As World War II wound down, R.K. Mellon decided to work on revitalizing Pittsburgh. By authorizing chief executives at Mellon concerns to do likewise, and encouraging other area industrialists to participate, he prompted the AC's formation and then its incorporation in 1944.<sup>74</sup> AC executive committee membership was restricted to individuals in their individual capacity;<sup>75</sup> the AC executive committee included leaders from Carnegie Mellon and Carnegie Institute of Technology.<sup>76</sup> In the later 1940s, more corporate CEOs joined the executive committee.<sup>77</sup> Though the AC's activity during Renaissance I was and is not beyond criticism, the partnership between this group and Mayor Lawrence was tremendously fruitful. It merits close attention as we examine how the City of Pittsburgh preserved and promoted the physical and cultural infrastructure of civil society.

The top priority for Pittsburgh at the end of World War II was "smoke abatement." Coal-induced pollution was Pittsburgh's distinguishing feature at the time.<sup>78</sup> Immediately after the war, local journalists, the City health director, and at least one member of the City Council agitated for smoke abatement.<sup>79</sup> Mayor Lawrence had campaigned on getting a 1941 anti-smoke ordinance implemented, and in 1946, the Pittsburgh City Council made it effective as of October

71. Mellon built on a banking and finance empire with beginnings in pre-Civil War western Pennsylvania, and the 1870 founding of what became The Mellon National Bank. 2 JOHN N. INGHAM, *BIOGRAPHICAL DICTIONARY OF AMERICAN BUSINESS LEADERS* 917-27 (1983). His grandfather, uncle, and father built the Mellon family fortune through banking and investments in western Pennsylvania industry, especially aluminum, but also chemicals, oil, and coal. *Id.* at 921, 923. Andrew Mellon, Richard King's grandfather, served in the federal government and began the family's strong tradition in philanthropy. *Id.* at 922.

72. *Id.* at 926.

73. LORANT, *supra* note 14, at 379.

74. HISTORY OF THE ALLEGHENY CONFERENCE, *supra* note 64; *see also* INGHAM, *supra* note 71, at 926.

75. INGHAM, *supra* note 71, at 926.

76. HISTORY OF THE ALLEGHENY CONFERENCE, *supra* note 64.

77. *Id.*

78. Stefano Luconi, *The Enforcement of the 1941 Smoke-Control Ordinance and Italian Americans in Pittsburgh*, 66 PA. HIST.: J. MID-ATLANTIC STUD. 580, 580-594 (1999); *see also* LORANT, *supra* note 14, at 386.

79. LORANT, *supra* note 14, at 373, 377.

1st—at first for commercial users and thereafter for domestic consumers of coal.<sup>80</sup> Meanwhile, the AC had absorbed an anti-pollution group, the United Smoke Council,<sup>81</sup> and it began to build broad support for a comprehensive, county-wide anti-pollution law; such a law was passed by the Pennsylvania State Legislature in 1949.<sup>82</sup> R.K. Mellon was able to pressure the Pennsylvania Railroad from blocking this legislation.<sup>83</sup> Getting a handle on area air pollution staunched the outflow of population and businesses, even though it raised the cost of living for working-class Pittsburgh residents.<sup>84</sup> The smoke abatement collaboration between Mayor Lawrence and the AC created a politically bipartisan civic coalition, positioning Pittsburgh for further redevelopment.<sup>85</sup>

What started as an effort to recover Pittsburgh from terrible smog and smoke pollution culminated in the redevelopment of the City's Central Business District (CBD);<sup>86</sup> this in turn motivated the modernizing old-Pittsburgh industrial companies to remain headquartered in the City and preserved Pittsburgh as a domestic U.S. financial center. Close associates of R.K. Mellon worked publicly and privately to redevelop the CBD. Arthur B. Van Buskirk served in the City's Redevelopment Authority while also presiding over and chairing the AC. Wallace Richards chaired the City Parking Authority and served in the Regional Planning Association.<sup>87</sup> Their efforts were key in bringing about Renaissance I's major physical improvements, such as Point Park, the Gateway Center, the Penn-Lincoln Parkway, a municipal public-private parking program, and multiple office buildings in the CBD.<sup>88</sup> According to Mayor Lawrence, Van Buskirk and Richards "pioneer[ed] municipal techniques [like] the use of public powers to clear blight, the use of public powers to provide parking spaces, the use of public and private funds to clear the way for open

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80. LORANT, *supra* note 14, at 381; Luconi, *supra* note 78, at 581.

81. Luconi, *supra* note 78, at 582.

82. HISTORY OF THE ALLEGHENY CONFERENCE, *supra* note 64.

83. Mellon intimated to the railroad that if it blocked the legislation, Mellon concerns would find other means for their shipping needs. LORANT, *supra* note 14, at 390-92.

84. Luconi, *supra* note 78, at 586-87.

85. *Id.* at 587. As David Lawrence put it: "A Democratic city administration acting on its own to take by process of law the properties of one set of owners so that they could be redeveloped by another set of private owners would have been met in 1950 by outraged screams from every defender of private enterprise." LORANT, *supra* note 14, at 411-17. But with one of the country's most successful heads of private enterprise backing the administration, Pittsburgh's redevelopment was protected from charges of "socialism." *Id.* at 417.

86. TROTTER & DAY, *supra* note 50, at 46 ("By the late 1960s, the city's Urban Redevelopment Authority (URA) had completed or initiated nineteen renewal projects, particularly the cluster of buildings at the confluence of the three rivers called 'The Golden Triangle.'").

87. LORANT, *supra* note 14, at 408-09.

88. *Id.* at 409-11.

spaces in the congested city, [and] the planning and construction of limited-access highways.”<sup>89</sup> Mayor Lawrence and the AC used state law to create the Urban Redevelopment Authority (URA), which secured the financial investment necessary for the overhaul. After being declined by the Metropolitan Life Insurance Company, the URA’s board sought investment from the Equitable Life Assurance Society (Equitable).<sup>90</sup> The URA cut a deal with Equitable, giving it redevelopment rights and opportunities in the CBD in exchange for an annual “toll” of \$50,000 for twenty years—a lucrative and innovative arrangement for the time.<sup>91</sup> Meanwhile, U.S. Steel and Alcoa decided to build new home offices in Pittsburgh, which led to the creation of Mellon Square. These companies funded much of the development of the Square, which included underground parking that provided municipal revenue.<sup>92</sup>

The architects of Renaissance I can be, and have been, criticized for excessively serving the interests of the City’s elites and ignoring the interests of its poorest citizens. But without a major physical overhaul, the City would probably have lost much of its population and its economic stakeholders. Nevertheless, reactions to the excesses and inequities of Renaissance I shaped Renaissance II, a second period of urban vitalization in Pittsburgh that took place in the 1980s.

#### 4. *Government and Identity After Home Rule*

As Renaissance I ended, the City of Pittsburgh entered the home rule era. In 1974, residents voted for a new City Charter. Home rule formalized some aspects of Pittsburgh’s municipal governance, but as explained above, a transition to home rule is not a transition to municipal sovereignty. Pittsburgh’s Charter did not aim to make it a wholly autonomous government. Instead, the Charter sought to formalize certain aspects of Pittsburgh’s municipal governance culture and practice, while reforming and introducing others. The Charter retained a strong executive but added mechanisms to increase transparency, accountability, and accessibility to municipal governance.<sup>93</sup>

At its outset, the preamble to Pittsburgh’s Home Rule Charter designates Pittsburgh a “responsible city” and elaborates a reciprocal vision of responsibility, whereby the City “seeks to ensure that all of its citizens’ needs are met, whether from public or private, city, coun-

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89. *Id.* at 411.

90. *Id.* at 428.

91. *Id.* at 430.

92. *Id.* at 438.

93. WHAT IS HOME RULE?, *supra* note 16, at 3.



ty, state or national sources,”<sup>94</sup> and “citizens generously accept service in government, participate thoughtfully in public decisions, support public employees in the performance of lawful duties, avoid frivolous use of their rights and supply their government with sufficient resources to meet its responsibilities.”<sup>95</sup> Various charter provisions aim to operationalize both sides of this pact. Most striking are the directives to the mayor to use wide executive authority to benefit the City via intergovernmental and public-private initiatives; the explicit charge to the City Council to function as an independent component of city government; the creation of a citizen’s review board to monitor the police department; and the addition of nonspecialized, geographically-based citizen advisory committees. In these provisions, we see how Pittsburgh’s Home Rule Charter sought to include more participants in city government and to affirm the City’s role in empowering its residents. The Home Rule Charter assumes and encourages the City to participate in Pittsburgh’s civil society.

Perhaps counterintuitively, Pittsburgh’s Home Rule Charter did not reduce the role of the executive. It actually directed mayoral activism, requiring the mayor to partner with every kind of fellow civil society actor to improve the City. The Home Rule Charter gave the mayor explicit authority “to make long and short range plans for the improvement of the economic, physical and social condition of the City and its neighborhoods;”<sup>96</sup> and to “promote intergovernmental relations,” specifically by cooperating with “other governments, public and quasi-public agencies for the promotion of public services, economic development and cultural activities of mutual benefit to all concerned.”<sup>97</sup> These directives codified the approach of Mayor Lawrence. For Pittsburgh, a strong, popularly elected mayor has been the linchpin of regular development and redevelopment of the City, in coordination with the county, the region, the state, and the federal government. The mayor has harnessed, and continues to harness, nongovernmental groups and organizations in these efforts.

The legislative branch of Pittsburgh’s municipal government, the City Council, did secure greater stature in the new Charter. The council gained the right to employ its own staff, including an attorney to act as its legal advisor and representative.<sup>98</sup> It also acquired the power to override a mayoral veto of legislation by a supermajority vote of the council.<sup>99</sup> These measures obviously injected more popular

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94. *Id.* at 5 pmbl.

95. *Id.*

96. *Id.* § 204(g).

97. *Id.* § 204(i)(1).

98. *Id.* § 310(a).

99. *Id.* § 310(e).

representativeness into municipal governmental operations, but the Charter also introduced new bodies to ensure that citizens had more hands-on involvement in local government and better protection of their right to participate in the civil society of Pittsburgh.

The 1974 Charter created the Human Relations Commission, to ensure civil rights in the City,<sup>100</sup> and the Citizen Review Board, responsible for holding the Pittsburgh police department accountable for use of excessive force.<sup>101</sup> Both bodies spoke to Pittsburgh's African-American residents' dissatisfaction with their treatment within the City.<sup>102</sup> Throughout the 1960s and into the early 1970s, African-American residents of Pittsburgh had dealt with an aggressive city police force.<sup>103</sup> The establishment of the Citizen Review Board was an early effort by the City to get a grip on the problem.<sup>104</sup> Supplemented by federal intervention,<sup>105</sup> the Citizen Review Board has con-

100. *Id.* § 216 (specifying a mayorally appointed Human Relations Commission to investigate a wide range of impermissible conduct, including violation of civil rights granted by the Charter itself).

101. *Id.* §§ 228, 229 (creating an independent citizen review board comprised of Pittsburgh residents, some chosen by the mayor and others by the City Council; empowering the board to investigate complaints of police misconduct).

102. A comprehensive discussion of Pittsburgh's black civil rights and black power movements is not possible here, but it is important to note that African Americans in Pittsburgh localized the concerns of these national campaigns. For a detailed discussion of all facets of Pittsburgh's African-American community's fight for equal protection under the law, see *Pittsburgh's Modern Black Freedom Movement*, in TROTTER & DAY, *supra* note 50, at 90-140.

103. Indeed, as some have noted:

Between November 1972 and April 1973, the Pittsburgh-Community Relations Project, a coalition of eighteen religious and social activist organizations, conducted a study of "citizen attitudes towards the police in Pittsburgh" as a basis for formulating more effective government policy on policing the city. The report offered a litany of incidents that occurred between black citizens and police between about 1968 and early 1973.

TROTTER & DAY, *supra* note 50, at 86.

104. Specifically,

Harvey Adams recalled that the Pittsburgh police would "abuse anyone [particularly black people] who dared challenge their authority." When Adams became chief of police for the [separate Housing Authority Council Police], he emphasized training a police force that would treat public housing tenants with "respect and care." After a series of mass meetings in 1974 to protest police brutality in the Homewood-Brushton area, African Americans formed Citizens Opposed to a Police State (COPS). Founded at Bethesda Presbyterian Church in Homewood, COPS represented a coalition of churches, civic, civil rights, and political organizations. According to coordinator Sala Udin of the Congress of Afrikan People, COPS aimed to end the mistreatment of black people by "hysterical policemen and set the record straight in the minds of people."

TROTTER & DAY, *supra* note 50, at 125. Sala Udin later went on to serve on the City Council. *Id.* at 188.

105. Pittsburgh was the first city in the United States to enter into a consent decree with the U.S. Department of Justice (DOJ) to settle a suit brought by the DOJ under the

tinued to fight excessive force and police brutality to the present day.<sup>106</sup>

The 1974 Charter also added “Community Advisory Boards” to municipal government.<sup>107</sup> These hyperlocal boards primarily review and advise the mayor and the City Council, but do not exercise independent authority. Nevertheless, they give ordinary citizens legal position in the City’s organizing document.

In addition to encouraging mayoral activism, empowering the legislature, and specifying direct involvement in aspects of city governance, commentary on the Charter makes clear the City’s overall responsibility to its citizens and the flexibility it should display in fulfilling this obligation:

City government has responsibility for the human needs of its people, and may fulfill these responsibilities by arrangements with other governments and non-governmental organizations, as well as by its own direct services.<sup>108</sup>

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Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141. *See* Consent Decree, *United States v. City of Pittsburgh*, No. 97-0354 (W.D. Pa. Feb 26, 1997), <https://www.clearinghouse.net/chDocs/public/PN-PA-0003-0002.pdf>; *see also* Sheryl Gay Stolberg, ‘It Did Not Stick’: The First Federal Effort to Curb Police Abuse, *N.Y. TIMES* (Apr. 9, 2017), <https://www.nytimes.com/2017/04/09/us/first-consent-decree-police-abuse-pittsburgh.html>. Despite reservations about some of the DOJ’s requirements, then Police Chief Robert McNeilly supported the implementation of a consent decree as a tool to advance the quality of policing in Pittsburgh. *Id.* The decree was lifted in 2002, contingent upon Pittsburgh coming into compliance with those provisions with which it had not already substantially complied. *Id.*

106. *Introducing the CPRB*, CITIZEN POLICE REVIEW BD. PITTSBURGH, <https://cprbpgh.org/about/introducing-the-cprb> (last visited Jan. 1, 2018). Pittsburgh continues to wrestle with the quality of its police department, and not just with regard to excessive force. In 2014, Pittsburgh Police Chief Nate Harper was sent to jail for tax evasion and misuse of public funds. Rich Lord, *Former Pittsburgh Chief Harper Gets 18-month Prison Sentence*, *PITTSBURGH POST-GAZETTE* (Feb. 25, 2014), <http://www.post-gazette.com/local/city/2014/02/25/Former-Pittsburgh-police-chief-Nathan-Harper-sentenced/stories/201402250123>. After a brief stint by an “outsider,” Mayor Bill Peduto appointed Pittsburgh police force veteran Mike Schubert with the backing of the City Council. *See* Jonathan D. Silver, *Peduto Names Scott Schubert as New Police Chief for Pittsburgh*, *PITTSBURGH-POST GAZETTE* (Jan. 27, 2017), <http://www.post-gazette.com/local/city/2017/01/27/Mayor-Peduto-names-Scott-Schubert-as-new-police-chief-for-Pittsburgh/stories/201701270194>; *see also* Jeffrey Benzing, *Pittsburgh Police Could Face Second Federal Consent Decree, Peduto Says*, *PUBLIC SOURCE* (July 1, 2014), <http://publicsource.org/pittsburgh-police-could-face-second-federal-consent-decree-peduto-says/> (reporting warnings from Mayor Peduto that without further reforms, Pittsburgh police department could come under a second consent decree); Adam Smeltz & Liz Navratil, *With Vocal Support from Council, Scott Schubert Is Likely to Stick as Police Chief*, *PITTSBURGH POST-GAZETTE* (Feb. 1, 2017), <http://www.post-gazette.com/local/city/2017/02/01/Pittsburgh-City-Council-voices-support-for-acting-police-chief-Scott-Schubert-in-confirmation-hearing/stories/201702010242>.

107. WHAT IS HOME RULE?, *supra* note 16, art. 6.

108. *Id.* at 27 pmbl.

The commentary also expands upon the “ ‘strong mayor’ form” of Pittsburgh’s city government<sup>109</sup> and makes explicit that the City Council is to serve as “a separate branch of government with important policy making power,” to check and balance the executive, and to have traditional legislative tax and spend authority.<sup>110</sup>

Neither the mayor nor the City Council could do much in the years shortly after the adoption of home rule, due to a terrible economic recession that officially lasted from 1979 to 1983.<sup>111</sup> This recession created the need for major municipal rejuvenation that became Renaissance II. As anticipated in the Home Rule Charter, partnerships played a significant role in Pittsburgh’s Renaissance II, but the nature of these liaisons differed from the city-corporate initiatives of Renaissance I. Nonprofit foundations and universities partnered with the City, as did the State of Pennsylvania,<sup>112</sup> which filled a gap left by the Reagan-era federal government’s reduction of involvement in urban renewal, civil rights, and anti-poverty programs.<sup>113</sup> The AC continued to be involved during Renaissance II, releasing an important economic development report in 1984. The report specified priorities for Pittsburgh aimed at making its economy more diverse and independent of manufacturing in the City and region.<sup>114</sup> The report also emphasized continuing investment in infrastructure and the overall quality of life for Pittsburgh residents.

Pittsburgh had to transcend heavy industrial manufacturing as the base of its economy, as this sector was in sharp decline.<sup>115</sup> In 1976, Pittsburgh Mayor Richard Caliguiri convened a new public-private group to address the problem. It included four major city departments (planning, housing, economic development, and urban redevelopment), the AC, and the City’s major universities and colleges (Carnegie Mellon, Duquesne, and the University of Pittsburgh).<sup>116</sup> This group spearheaded new construction and improved infrastructure geared toward making Pittsburgh a leader in biotechnology and the service sector.<sup>117</sup> By 1985 these efforts yielded fruit. That year,

109. *Id.* art. 2.

110. *Id.* art. 3.

111. 2 ROY LUBOVE, *TWENTIETH-CENTURY PITTSBURGH: THE POST-STEEL ERA* 25 (1996).

112. *Id.* at 25, 27.

113. *Id.* at 26.

114. *Id.* at 28 (highlighting advanced technology, services, corporate headquarters, and international trade as promising alternatives to manufacturing as the basis for Pittsburgh’s prosperity).

115. TROTTER & DAY, *supra* note 50, at 141-42.

116. LUBOVE, *supra* note 111, at 57-85; TROTTER & DAY, *supra* note 50, at 142; Robert E. Gleeson, *Toward a Shared Economic Vision for Pittsburgh and Southwestern Pennsylvania: A White Paper Update* 12-16 (Working Paper 1994).

117. TROTTER & DAY, *supra* note 50, at 143.

Rand-McNally named Pittsburgh “the most livable” city in the United States.<sup>118</sup>

Since the mid-1980s, Pittsburgh has become increasingly visible on the international level. Most recently, in 2017, Pittsburgh received international attention when President Donald J. Trump tried to use it to justify his withdrawal of the United States from the Paris Climate Agreement.<sup>119</sup> From all quarters, Pittsburgh rejected being associated with this policy.<sup>120</sup> The mayor of Pittsburgh, Bill Peduto, responded with a *New York Times* op-ed that he coauthored with the mayor of Paris.<sup>121</sup> Mayor Peduto also partnered with mayors across the United States to form “Climate Mayors,” a consortium of American municipalities working to uphold the United States’ commitment to achieving the goals of the Paris Agreement.<sup>122</sup> Pittsburgh’s institutions of higher education banded together to preserve the Environmental Protection Agency data on climate change.<sup>123</sup> Pittsburgh signed on to “We Are Still In,” a climate protection alliance between cities, states, companies, museums, and higher-educational institutions. We Are Still In is addressed specifically to the “international community and to the parties to the Paris Agreement.”<sup>124</sup>

### 5. *Wrap-Up*

The details of Pittsburgh’s history, the evolution of its municipal government, and the involvement of the citizenry in and with that government illustrate how government can be both partner and instigator in the development of civil society. Yet this role for govern-

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118. *Id.*

119. Kim Lyons, Emily Badger & Alan Binder, *A Revitalized Pittsburgh Says the President Used a Rusty Metaphor*, N.Y. TIMES: THE UPSHOT (June 2, 2017), <https://www.nytimes.com/2017/06/02/upshot/a-revitalized-pittsburgh-suggests-the-president-used-a-rusty-metaphor.html>; Michael D. Shear, *Trump Will Withdraw U.S. From Paris Climate Agreement*, N.Y. TIMES (June 1, 2017), <https://www.nytimes.com/2017/06/01/climate/trump-paris-climate-agreement.html>.

120. Tracy Certo, *Pittsburgh-Paris in the News (Updated!): A Roundup of Coverage Worldwide*, WHAT’S NEXT FOR PITTSBURGH? (June 5, 2017), <http://www.nextpittsburgh.com/latest-news/pittsburgh-paris/>.

121. Hidalgo & Peduto, *supra* note 25.

122. CLIMATE MAYORS, <http://climatemayors.org> (last visited Jan. 1, 2018). As of this writing, the Climate Mayors include 372 U.S. mayors from across the country, together representing 67.5 million Americans.

123. Julian Routh, *Pittsburgh Libraries Join Initiative to Protect Data*, PITTSBURGH POST-GAZETTE (April 3, 2017), <http://www.post-gazette.com/local/region/2017/04/03/Donald-Trump-EPA-data-Carnegie-Library-Pittsburgh-Data-Rescue-Pittsburgh/stories/201704030063>.

124. *Open Letter to the International Community and Parties to the Paris Agreement from U.S. State, Local, and Business Leaders*, WE ARE STILL IN, <https://www.wearestillin.com/we-are-still-declaration> (last visited Jan. 1, 2018).

ment is conspicuously absent from well-known, historically important liberal political theory.

### *B. The Classical Liberal Perspective on Government and Civil Society*

Originally, classical liberal political theory in the English-speaking tradition addressed itself to problems of the English nation-state in the seventeenth century. Paramount was the problem of sovereignty, particularly its double-edged nature: exercise of sovereign authority seemed vital to maintaining the peace but also seemed to license tyranny.

Thomas Hobbes and John Locke were the two great early thinkers who wrestled with this tension. Each wrote in response to the social and political conditions of their day. Hobbes, older than Locke, wrote first, publishing *Leviathan* in 1651; Locke published his *Second Treatise of Government* in 1690.<sup>125</sup> While each man confronted somewhat different actual political and social circumstances,<sup>126</sup> their respective times had much more in common with each other than either has with the circumstances of present day city-dwellers in the United States of America. Yet Hobbes and Locke have cast a long shadow over the liberal conception of government and law, as well as their respective relations to civil society.<sup>127</sup>

Throughout the seventeenth century, social and political disagreement constantly beset England (and therefore, also, Scotland, Wales, and Ireland); chiefly, fierce intra-Christian religious disputes and recurrent power battles between Parliament and King.<sup>128</sup> Hobbes was writing in the shadow of the English Civil Wars; Locke in that of the Glorious Revolution. For Hobbes, the central problem of law was literally the problem of order.<sup>129</sup> In contrast to Hobbes, Locke was not

125. See generally THOMAS HOBBS, *LEVIATHAN* (Richard Tuck ed., Cambridge Univ. Press 1996) (1651); LOCKE, *supra* note 5.

126. See RAWLS, *supra* note 4; see also WEST, *RE-IMAGINING JUSTICE*, *supra* note 4.

127. This shadow is especially apparent in the legal theory literature on rule of law. See, e.g., Jeremy Waldron, *The Rule of Law*, in THE STANFORD ENCYCLOPEDIA OF PHILOSOPHY (2016), <https://plato.stanford.edu/archives/fall2016/entries/rule-of-law/>.

The most important demand of the Rule of Law is that people in positions of authority should exercise their power within a constraining framework of well-established public norms rather than in an arbitrary, ad hoc, or purely discretionary manner on the basis of their own preferences or ideology. It insists that the government should operate within a framework of law in everything it does, and that it should be accountable through law when there is a suggestion of unauthorized action by those in power.

128. JAMES D. TRACY, *EUROPE'S REFORMATIONS, 1450-1650: DOCTRINE, POLITICS AND COMMUNITY* 205-06 (2d ed. 2006).

129. BERNARD BAILYN, *THE IDEOLOGICAL ORIGINS OF THE AMERICAN REVOLUTION* 173-74, 199-200 (enlarged ed. 1992).

concerned with justifying order over violence; he was concerned with distinguishing legitimate order from illegitimate order and with how jurisdiction can be shared by different constitutive components of a legitimate regime.<sup>130</sup> Both authors' political theories arose in reaction to questions of monarchy<sup>131</sup> and religion, as even a cursory description of seventeenth century English history indicates.

As early as 1614, Sir Edward Coke, serving as Lord Chief Justice, asserted the primacy of English common law over the king.<sup>132</sup> In response, King James I had him removed from the judiciary. In 1626, James' son, Charles I, became king and married a practicing Catholic, Henrietta Maria of France. This prompted the English Parliament to assert itself with the Petition of Right, which sought to have Charles I recognize English common law constraints upon the monarch. Coke, still a member of Parliament, invoked Magna Carta as part of his rallying cry for the claim that the king is bound by common law.<sup>133</sup> Shortly thereafter, Charles I dismissed Parliament, resolved to rule without it, and did not reconvene it for the next eleven years.<sup>134</sup> Frustrated in his efforts to raise money, Charles I was forced to call in Parliament in 1640; however, in 1642, Charles I arrested the members of Parliament most opposed to an unconstrained monarchy. By 1644, England was in open civil warfare.<sup>135</sup>

Many thousands died in battle or because of disease and hardship associated with this fighting. Oliver Cromwell, an anti-royalist battlefield commander, rose to power and his army imprisoned Charles I in 1647.<sup>136</sup> For the next year war continued to dominate England, while a parliamentary commission tried and convicted Charles I of treason, then ordered his execution, which happened in 1649. At first, Cromwell established a proto-republic but it quickly degenerated into a quite literally puritanical regime of martial law, featuring the slaughter of Irish Catholics as Cromwell's army besieged Ireland.<sup>137</sup> Cromwell continued to apply martial law throughout England until his death in 1658.

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130. DUNN, *supra* note 6, at 120, 124, 168-69; *see also* BAILYN, *supra* note 129, at 173.

131. The protracted English Civil Wars arose from conflict between Parliament and the King that manifested at least as early as the first decades of the seventeenth century, became military in 1642, and only settled into an uneasy peace almost twenty years later. JOHN MORRILL, *REVOLT IN THE PROVINCES: THE PEOPLE OF ENGLAND AND THE TRAGEDIES OF WAR 1630-1648*, at 29, 201 (2d ed. 1999).

132. BAILYN, *supra* note 129, at 177, 179-80.

133. TRACY, *supra* note 128, at 205.

134. *Id.* at 206.

135. *Id.* at 210.

136. *Id.* at 211-12.

137. *Id.* at 212.

Amid Cromwellian authoritarianism, Thomas Hobbes published *Leviathan* in 1651, where he made the argument that only a strong sovereign, the Leviathan, can avert constant warfare.<sup>138</sup> Law and government are necessary to achieve “freedom from private terror” and violence.<sup>139</sup> Cromwell failed to provide peace or freedom from terror, however, and his rule left unsolved the most vexatious issues facing England, which continued to be the role of the monarch and, relatedly, the status of religion in political life.

In 1661, the son of Charles I was permitted by Parliament to reclaim the English crown upon condition of recognizing the authority of the English common law. At the same time, Parliament passed the Test Act, limiting membership in both Houses of Parliament to Anglicans (thereby excluding both nonconforming Protestants and Catholics). This set of measures quieted violent civil warfare in seventeenth century England. But the central issues of parliamentary jurisdiction, monarchical prerogative, and the status of Catholics and non-Anglican Protestants remained highly unsettled for a good thirty years after the end of the English Civil Wars. Charles II died in 1685, and his brother, James II, ascended to the throne.<sup>140</sup> James II was a Catholic, and he attempted to grant Catholics and nonconforming Protestants more political standing. This provoked conflict with Parliament, which James II dismissed. By 1688, Protestant nobles feared a Catholic succession and they conducted the Glorious Revolution (so-called because it did not involve violent warfare). The nobles invited William of Orange, literally a prince from another country, to ascend to the English throne,<sup>141</sup> so long as he and his wife Mary accepted the written terms of the English Bill of Rights, a statute based on the Petition of Right that Parliament had presented to Charles I in 1628.<sup>142</sup> William arrived in England with an army, prompting James II to flee the country. Parliament declared this constituted abdication and crowned William and Mary joint monarchs. Thus ended the Glorious Revolution, which reordered the relationship between monarch and Parliament and excluded all but Anglicans from political activity.

John Locke, who wrote his *Second Treatise of Government* in the aftermath of the English Civil Wars and in the run up to the Glorious Revolution, saw the social contract as a vehicle for both questioning and justifying the political legitimacy of an established order. Locke

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138. HOBBS, *supra* note 125, § 6.

139. See WEST, RE-IMAGINING JUSTICE, *supra* note 4, at 38-42.

140. TIM HARRIS, REVOLUTION: THE GREAT CRISIS OF THE BRITISH MONARCHY, 1685-1720, at 39 (2007).

141. *Id.* at 3, 271.

142. TRACY, *supra* note 128, at 205.



argued that so long as sovereignty is shared between the monarch and the population in a way that nets a benefit to the well-being of all a regime, it is in fact legitimate. He emphasized the difference between government by legitimate regime and rule by arbitrary decree.<sup>143</sup> Locke does not require that the regime supply more than a minimal level of overall well-being for it to be legitimate. In Locke's view, securing the freedom of religious worship was the paramount social good supplied by a legitimate regime.<sup>144</sup> So, though a government had obligations to the general well-being, a legitimate political regime could include all sorts of injustice.<sup>145</sup> Still, Locke's account of the role of government was rather more affirmative than Hobbes' view. Locke's conception contained the germ of the idea that government had obligations to create certain social conditions or be legitimately resisted. But the requisite social conditions were minimal. Locke did not have a sense of the pluralist, many-faceted civil society of twenty-first century America, and his theory in no way envisioned or demanded that government play an enabling role in such society.

Eighty years after the Glorious Revolution, questions of sovereignty, legitimate jurisdiction, and religious freedom continued to dominate the development of late colonial and post-Revolution American government.<sup>146</sup> The states individually and then in Congress worked out a conception of sovereignty without a monarchy. In the Federal Constitution, the states eliminated shared sovereignty in favor of dual sovereignty—thereby totally restructuring the concept of sovereignty.<sup>147</sup> They quite firmly separated religion and government, doing away with state religions and generally extending political rights without regard for religious practice or belief (at least among Christians).<sup>148</sup> In North America, the original states and the U.S. federal government adopted constitutions rooted in, or reacting to, the concerns of seventeenth century English political theorists. The need to constrain sovereignty manifested in state constitutions that prioritized bills of rights, the original Bill of Rights in the U.S. Constitution, and the vertical and lateral divisions of sovereign power estab-

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143. LOCKE, *supra* note 5, § 90. Locke rejects absolute monarchy as a legitimate regime because it subjects all to the judgment of one ruler, which is arbitrary. Locke regards law, created in a commonwealth, as the corrective to arbitrariness. *Id.* § 94.

144. DUNN, *supra* note 6, at 123 ("What gave normative status to human political communities [for Locke] were sociological necessities for the accomplishment of religious duty, assessed in the most rationalist fashion.").

145. *Id.* at 123-25.

146. See BAILYN, *supra* note 129, at 198.

147. ALISON L. LACROIX, *THE IDEOLOGICAL ORIGINS OF AMERICAN FEDERALISM passim* (2010).

148. For a discussion of early American treatment of non-Christians' rights to political participation, see Michael Ari Storch, *To Serve, Not to Swear, Fighting for the Right to Hold Public Office* (2017) (unpublished manuscript) (on file with author).

lished in the body of the U.S. Constitution. Moreover, the Federal Constitution makes no reference at all to civil society, and prior to the American Civil War, no federal statute referred to civil rights. In the wake of the Civil War, Congress passed the eponymous Civil Rights Act of 1866, and since then the federal legislature and the federal judiciary have developed the category as a tool for federal level governance. Although the Civil War and its aftermath shifted the relationship between the federal government and the states but did not fundamentally alter the conception of law and government as primarily remedial, providing means for correcting inequities in access to civil society but not casting government or law affirmatively as positive builders of civil society. Certainly, introduction of, and attention to, civil rights at the federal level has been important, even profound. But it has led people to conflate a federal roster and interpretation of civil rights as exhaustive of the category and, perhaps more significantly, to focus on rosters of civil rights without consideration of the more foundational idea of civil society—the good to which civil rights are supposed to secure access.<sup>149</sup> To the extent a conception of civil society and the role of law and government in it can be gleaned from a national, federal vantage point, it results, broadly speaking, from a fusion of Whiggish political principles and post-Civil-War abolitionist ideals.

As with civil rights and civil society, the U.S. Constitution is silent about local government. Cities like Pittsburgh did not even get going until the nineteenth century and neither their local government nor local culture is particularly rooted in late-colonial, post-Revolution American constitutionalism. For Pittsburgh, as with most American cities, other historical moments matter more than the English Civil Wars, the Glorious Revolution, the American Revolution, and the formation of the United States of America. These moments include the American Civil War; early twentieth century Progressivism;<sup>150</sup> later twentieth century opposition to Jim Crow;<sup>151</sup> the early twentieth century rise and mid-twentieth fall of urban heavy manufacturing;<sup>152</sup> and the twenty-first century movement to protect the earth's climate.<sup>153</sup>

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149. Other legal scholars have questioned the conflation of federal civil rights law as interpreted by the federal judiciary with the whole of civil rights. Robin West is the standout. See WEST, RE-IMAGINING JUSTICE, *supra* note 4; Robin L. West, *Tragic Rights: The Rights Critique in the Ages of Obama*, 53 WM. & MARY L. REV. 713, 713-46 (2011); Robin West, *Is the Rule of Law Cosmopolitan?*, 19 QUINNIPAC L. REV. 259, 259-292 (2000); Robin West, *Reconstructing the Rule of Law*, 90 GEO. L.J. 215 (2001); Robin West, *The Limits of Process*, in GETTING TO THE RULE OF LAW 32, 32-51 (James Fleming ed., 2011).

150. See *supra* text accompanying notes 44-46.

151. See *supra* text accompanying notes 66-69.

152. See *supra* text accompanying notes 63, 65.

153. See *supra* text accompanying notes 119-24.

### III. CONCLUSION

When we juxtapose the City of Pittsburgh and the polities that have animated classical liberal accounts of the relationship between government law and civil society, we see that the classical account needs supplementing. The classical account views government and law suspiciously and individuals as imperiled by governmental overreach. But when we consider local government, we get a different sense. We see mutual engagement between the government and the populace. We see governmental flexibility, adaptiveness, accessibility, embeddedness in daily life, and creativity. We observe how government contributes to complex harmony and collective action. When we inject the local into the liberal view of government, law, and civil society, we see how government fosters individual flourishing by creating and contributing to networks of coordination and cooperation.

Classical liberalism and, relatedly, American constitutionalism generally treat government and law as necessary evils, best kept to a minimum. Developed with the problems of sovereignty and tyranny in mind, this nation-state-oriented view of law and government depicts both as capable of fixing problems that arise in their absence but which themselves pose great risk to individual flourishing. A close look at the City of Pittsburgh and the role it has played in facilitating civil society reveals the inescapability of interdependence and how the layers and varieties of collective action manifest in a twenty-first century American city. The local perspective makes clear that law and government can enable and promote civil society; they need not operate only at its edges, staving off the worst threats to it. Pittsburgh shows what a government can accomplish when it is not plagued by questions of sovereignty or outbreaks of civil war.